

Serial No. 09/469,499

Corrected Response to Office Action Mailed July 29, 2003
March 8, 2004**REMARKS**

In response to the Notice of Non-Compliant Amendment dated November 6, 2003, applicant respectfully traverses the assertion therein for the following reasons, and submits that the "Amendment to the Claims" Section of the paper filed October 29, 2003 was, in fact, in compliance with the requirements of 37 CFR 1.121.

The Notice required correction of the "Amendment to the Claims" Section in order to list "cancelled claims." Upon review of the file history thereof, it is noted that the present application was filed on March 20, 2001, as a Continuation Prosecution Application (CPA), of a parent application which was filed December 22, 1999, as a division of Application Serial No. 08/940,941, which itself was filed as a Rule 62 Continuation of Application Serial No. 08/391,861. The present CPA was filed with claims 18-22 and 28-37. Therefore, the only claims which have ever been filed or presented in the *present* application include claims 18-22 and 28-37, as well as any amendments thereto or any claims added thereto.

The text of 37 CFR 1.121 (c) requires that each document that includes an amendment to a claim "must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in *the* application." -- i.e., in the presently pending CPA, not in any of the *parent* applications thereof.

As the present "continued prosecution *application*" was filed only with claims 18-22 and 28-37, it is respectfully submitted that any document which amends any claim in the CPA (or its subsequently requested continued examination) must therefore "include a complete listing of" claims 18-22, 28-37 and any other claims subsequently added, as these are the only claims "ever presented ... in the [continued prosecution] application."

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In support of this assertion, applicant provides the following history of the claims pending in the present application, by consideration of the claims as presented in the antecedent parent applications.

The *parent* [division] application was filed December 22, 1999 with five claims 18-22. During prosecution of that application, an amendment filed November 7, 2000, amended claims 18-22 and added new claims 23-32.

The present Continuation Prosecution Application was subsequently filed on March 20, 2001, together with a preliminary amendment which amended claims 18-22, cancelled claims 23-27, amended claims 28-32 and added new claims 33-37. Therefore, the claims *originally presented* for examination in the *present* application included claims 18-22 and 28-37.

In an amendment dated July 2, 2001, claims 18-22 were amended and new claims 38-47 were added. In response to a Final Action and in support of a Request for Continued Examination, an amendment was filed July 14, 2003, further amending claims 18-22, 30, 35 and 42-43.

Accordingly, when a subsequent amendment was filed October 29, 2003, in response to an action dated July 29, 2003, it was apparent that the only claims ever "presented" for prosecution in the present application were claims 18-22, 28-37 and 38-47. Accordingly, the appropriate listing of the claims to be provided under the provisions of 37 CFR 1.121(c) is a listing including status identifiers for claims 18-22 and 28-47, as clearly done in the amendment of October 29, 2003.

The assertion that the listing provided therein is thus believed improper, and inconsistent with the clear requirements of 37 CFR 1.121(c). Reconsideration and withdrawal of the same is thus in order and the same is courteously solicited.

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Nonetheless, in order to expedite prosecution, the present paper attempts to provide a corrected "amendment to the claims" section of the paper filed October 29, 2003.

As the statement made at page 2 of the Notice, that "A complete listing of all of the claims is not present" is in error, since all claims ever presented in the present application are identified, the present paper attempts to expedite prosecution by addressing the further statement that "cancelled claims should be listed." Since the Notice does not identify *which* cancelled claims should be listed, the following remarks address several alternatives.

As noted above, no claims have ever been cancelled in the present continued prosecution application. However, claims 23-27 were cancelled in the *parent* application, prior to filing of the present continued prosecution application. Therefore, if the Legal Instruments Examiner (LIE) believes these claims should be listed, the corrected listing of the claims provided herewith includes claims 23-27.

Moreover, although never "presented" either in the present or in the parent application, in a Preliminary Amendment accompanying the *parent* application, claim 1 was cancelled. Therefore, for the same reason, the corrected listing of the claims also includes claim 1.

Finally, although never "presented" either in the present or in the parent application, instructions were given in the *transmittal sheet* accompanying the parent application (thus not in any amendment ever presented) to cancel claims 2-17. Therefore, the corrected listing of the claims similarly includes claims 2-17.

In summary, to expedite prosecution the corrected listing of the claims includes claims 1, 2-17 and 23-27, although it is submitted that none of these claims is required by 37 CFR 1.121 to be listed. Therefore, upon reconsideration of the Notice, the LIE is requested to withdraw the same and to accept the amendment as originally filed October 29, 2003 as being a compliant

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amendment. To the extent that the LIE considers any of claims 23-27, claim 1 or claims 2-17 as being required to be listed, it is requested (and hereby authorized) that the present corrected amendment be accepted or modified as necessary to include only such listing(s) and to delete therefrom any reference to claims not required to be listed.

Therefore, it is respectfully submitted that whether or not the Notice is withdrawn, in whole or in part, the present Response provides a compliant amendment and that examination of the same is in order.

The Examiner is requested to inform the undersigned if any further issues or questions should arise with respect to the amended and corrected claims.

Respectfully Submitted,

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Date: March 8, 2004